The interim injunction restrained the defendant from having anything to do with the polyurethane business in the exclusive areas for a period of five years from the date of cessation of his employment with the plaintiffs. In view of the limited interest the plaintiffs sought to protect, the injunction was plainly too wide. It is not necessary to decide whether the scope of the covenant was also too wide: see *Commercial Plastics Ltd* v *Vincent*[2] (where a restriction preventing an ex-employee from seeking employment with the said plaintiffs' competitors in the PVC calendering field for one year after cessation of employment was struck down when the said plaintiffs required protection only for trade secrets relating to the production of adhesive tape).

For the above reasons, I discharged the injunction with costs at the conclusion of the hearing.

Application allowed.

Solicitors: *Toh Weng Cheong & James Goon; Hee Theng Fong & Co.*

Reported by *Terence Tan Bian Chye*

Public Prosecutor v Tan Boon Tat

HIGH COURT (SINGAPORE) — CRIMINAL CASE NO 2 OF 1989
THEAN AND YONG PUNG HOW JJ
28 MARCH 1990

Criminal Procedure — Statements — Whether made voluntarily — Whether oppression present — Whether s 122(6) warning had to be explained to accused — Criminal Procedure Code (Cap 68, 1985 Ed), ss 121(6), 122(6) & 123

The accused was charged with trafficking in controlled drugs by transporting two bags of diamorphine. The prosecution adduced a s 122(6) statement made by the accused to the narcotics officers. The defence objected to the statement on the grounds that they were not made voluntarily and that no proper warning was given to the accused.

Held, finding the accused guilty:

(1) A narcotics officer exercising his powers under the Misuse of Drugs Act (Cap 185, 1985 Ed) is not a police officer within the meaning of s 122 of the Criminal Procedure Code. The admissibility of a statement made to him is therefore governed by the Evidence Act (Cap 97, 1985 Ed).

(2) The court was satisfied that before and after his statement was recorded the accused was not threatened or put in fear, neither was any inducement held out to him. Even if one of the interrogators had asked him to co-operate, such a request in the circumstances could not amount to or constitute an inducement. If the officers had said the words that the accused alleged they did, the court was not satisfied that what the accused said was a result of something said or done by the officers.

(3) Although one of the narcotics officers had told the accused's wife not to worry and that he and the accused were best friends, this statement was not made to the accused, though within his hearing. There was no evidence that in consequence of what was said, the officer persuaded the accused to make the statement that he made.

(4) Although the statement was made while the accused was tired, hungry and thirsty and under great stress, the court did not think that he was in such a state that he had no will to resist making a statement which he did not wish to make.

(5) Section 122(6) of the Criminal Procedure Code had a direct bearing on s 123 of this Code, and the whole exercise prescribed in s 122(6) is to forewarn the accused of the court's power under s 123(1). A failure to comply with s 122(6) cannot affect the admissibility of the accused's statement, though it may affect the weight to be attached to that statement.

(6) If no statement is made, the court in determining the guilt of the accused is, depending on the circumstances, entitled to decline to invoke s 123(1) to draw adverse inferences against the accused.

(7) The s 122(6) warning was couched in very simple English and it was not necessary to explain it. Such an attempt might even convey a wrong meaning. If the accused did not understand English, then an accurate interpretation of the charge and warning would be sufficient. This was done in the present case.

(8) At the time when the accused was arrested, there was found in the boot of his car the bags of drugs. As the car was driven by him, he had to rebut the statutory presumptions of

possession and knowledge of the nature of the drug against him. The accused had failed to rebut these presumptions.

Cases referred to

1 *Loong Phong Hoy* v *PP* [1981] 2 MLJ 55 (folld)
2 *DPP* v *Ping Lin* [1976] AC 574 (folld)
3 *PP* v *Chan Sway Beng* [1988] 2 MLJ 405 (not folld)
4 *Wong Kee Chin* v *PP* [1979] 1 MLJ 157 (refd)

Legislation referred to

Criminal Procedure Code (Cap 68, 1985 Ed) ss 121(5), (6), 122(6), 123
Misuse of Drugs Act (Cap 185, 1985 Ed) ss 5(a), 17, 18(1), (2), 33, Schedule A

RS Wijaya for the accused.
Jasvender Kaur (Miss) for the Public Prosecutor.

Cur Adv Vult

Thean J (delivering the judgment of the court): The accused, Tan Boon Tat ('the accused'), was charged with having trafficked in controlled drugs by transporting two polythene bags of drugs containing not less than 1,120.81g of diamorphine from the carpark of Lorong 7, Toa Payoh to the entrance of the carpark of Balestier Plaza in a motor car EP3230P between 3.30pm and 3.46pm on 10 May 1987. The charge against him was as follows:

> You, Tan Boon Tat, are charged that you on or about 10 May 1987 between 3.30pm and 3.46pm in Singapore, did traffic in a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act (Chapter 185), to wit, by transporting two polythene bags of drugs containing not less than 1,120.81g of diamorphine from the carpark of Lorong 7, Toa Payoh to the entrance of the carpark of Balestier Plaza in a motor car, EP3230P without any authorization under the said act or the regulations made thereunder and you have thereby committed an offence under s 5(a) and punishable under s 33 of the Misuse of Drugs Act.

He was tried before us, and at the conclusion we found him guilty of the charge, and we convicted him accordingly.

Case for the prosecution

The evidence led by the prosecution from a number of witnesses was this. In the morning of 10 May 1987, which was a Sunday, Jamaludin bin Salleh, the senior narcotics officer of the Enforcement Division, Central Narcotics Bureau ('CNB'), received certain information concerning a male Chinese known to him as 'Ah Tat'. He telephoned his colleague, Lim Chei Yoo, another senior narcotics officer, and sought the latter's assistance to trail 'Ah Tat' who was believed to be at 369-A, Balestier Road. After he had telephoned Lim, Jamaludin instructed four narcotics officers, Ismail bin Senin, Riduan bin Mohamad Noor, Juraimi bin Suradi, and Wan Othman Wan Noah, and a volunteer special constable, Ong Thian Chin, to proceed to the vicinity of 369-A, Balestier Road to keep a surveillance on 'Ah Tat'. All five of them left in two cars: one driven by Juraimi with Wan Othman as the passenger and the other car driven by Ong Thian Chin with Riduan and Ismail as the passengers. Jamaludin also left for the same destination on his motor cycle with an assistant narcotics officer, Lim Tian Siew, as his pillion rider. In the meanwhile, Lim Chei Yoo got in touch with his team consisting of narcotics officer, Chew Khai Chow, and four assistant narcotics officers, See Leng Yeow, Tai Kwong Yong, Tan Wu Chyuan and Siew Lai Lone, at their residences respectively, and instructed them to report to the CNB office. Lim Chei Yoo and his team assembled at the office and there he briefed his team, and immediately thereafter, at about 12.05pm, they left for 369-A, Balestier Road. At about 12.15pm, all the officers were present at or around the vicinity of 369-A, Balestier Road and took up their respective positions. It was understood that Jamaludin would identify 'Ah Tat' to them. At about 12.20pm, Jamaludin saw 'Ah Tat' at the five-foot way of a row of shop houses, wearing dark pants and a blue T-shirt. He thereupon informed, over a radio set, the rest of the officers of the description, and they all saw him entering 369-A, Balestier Road. 'Ah Tat' is the accused. Shortly thereafter, Jamaludin left with Lim Tian Siew for the Khe Bong Neighbourhood Police Post.

The other officers remained at their respective positions and continued their surveillance on the accused. At about 12.40pm, the accused came out of 369-A, Balestier Road and went to a motor car No EP 3230P which was parked very near to 369-A, Balestier Road. He drove the car and made a U-turn in front of Balestier Plaza and proceeded towards the direction of Moulmein Road. Lim Chei Yoo rode his motor cycle with See Leng Yeow as his pillion rider, and Chew Khai Chow also rode a motor cycle with Tai Kwong Yong as the pillion rider, and they trailed the car driven by the accused. The car travelled along Balestier Road, Moulmein Road, Newton Road, Scotts Road, Orchard Boulevard, Grange Road, Tanglin Road, Tiong Bahru Road, Jalan Tiong, Lengkok Bahru and finally to Hoy Fatt Road, and went into a carpark at the rear of Block 28, Hoy Fatt Road. Lim Chei Yoo parked his motor cycle and with See Leng Yeow went to a void deck of a block of flats opposite Block 28 and kept watch on the accused. The accused was seen entering flat #06-34 in Block 28. About half an hour later, the accused was seen leaving the flat, and at that time he was wearing a yellow T-shirt and the same dark pants. The accused went to the carpark and drove his motor car out of the carpark. The car was again trailed by the motor cycle ridden by Lim Chei Yoo with See Leng Yeow as the pillion rider, and another motor cycle ridden by Chew Khai Chow with Tai Kwong Yong as the pillion rider. The accused drove the car back to Balestier Road. By the time the officers reached the vicinity of 369-A, Balestier Road, they saw the car parked near the premises,

369-A, but did not see the accused. The four narcotics officers again took up their respective positions at the vicinity and together with the other officers, who were already there — except Wan Othman, Wan Noah and Juraimi bin Suradi who had left and joined Jamaludin bin Salleh at the Khe Bong Neighbourhood Police Post — continued their surveillance on the accused. At this time Lim Chei Yoo through his radio set instructed assistant narcotics officer Siew Lai Lone at CNB to join the party of officers at Balestier Road. Siew arrived there in a car with assistant narcotics officer Tan Wu Chyuan at about 3.05pm.

At about 3.10pm the accused was seen coming out of 369-A, Balestier Road. He went to his car and drove towards Thomson Road. This time he was trailed by Lim Chei Yoo on his motor cycle with See Leng Yeow as the pillion rider and Chew Khai Chow also on his motor cycle with Tai Kwong Yong as his pillion rider, and, in addition, by two motor cars, one driven by See Lai Lone with Tan Wu Chyuan as the passenger, and another car driven by Ong Thian Chin with Riduan Mohamad Noor and Ismail bin Senin as the passengers. The accused was trailed to the carpark of Block 17-19, Lorong 7, Toa Payoh; there he parked his car behind Block 18. Lim Chei Yoo rode his motor cycle into the carpark; See Leng Yeow then alighted from the motor cycle and trailed the accused on foot. However, he lost sight of the accused and waited in the vicinity at the ground floor of Block 18.

At about 3.25pm, See Leng Yeow saw the accused at the ground floor near the coffeeshop; the latter was then carrying a white plastic bag. See Leng Yeow trailed the accused on foot to his car and he saw the accused opening the boot of his car and putting the white plastic bag into the boot and closing it. The accused then drove his car out of the carpark. See Leng Yeow then beckoned to Lim Chei Yoo who rode his motor cycle forward and picked him up. At that point, See Leng Yeow told Lim Chei Yoo that he saw the accused carrying something in a white plastic bag and placing it in the car boot. The officers then drove their respective vehicles and trailed the accused back to Balestier Road. The accused drove along Balestier Road, passed Balestier Plaza, made a U-turn near Pegu Road Outpatient Dispensary and proceeded along the opposite direction. He passed 369-A and immediately after that made another U-turn in front of Balestier Plaza. At that point of time, Lim Chei Yoo immediately instructed See Leng Yeow to inform the other narcotics officers through the radio set to arrest the accused when he alighted from the car; See Leng Yeow accordingly conveyed the instructions. The accused's car, after making the U-turn at Balestier Plaza, turned into Jalan Ampas intending to go into the carpark of Balestier Plaza. As the accused's car stopped at the entrance, Ong Thian Chin stopped his car immediately behind the accused's car. After the car had stopped, Riduan Mohamad bin Noor and Ismail bin Senin immediately rushed out of their car. Ismail went to the driver's side while Riduan went to the front passenger's side of the accused's car. Ismail identified himself as a narcotics officer and removed the key from the car. He was then joined by the other officers. The accused was arrested, handcuffed and brought to the rear of the car. Lim Chei Yoo asked See Leng Yeow to take the car key from Ismail and open the car boot, which the latter did. When the car boot was opened, See Leng Yeow pointed to Lim Chei Yoo the white plastic bag, which he said he saw the accused carrying, which was then in a blue plastic bag. Lim Chei Yoo opened the white plastic bag and found that it contained two polythene bags, one white and the other blue, which had bars of white compressed powder wrapped in plastic sheets, and he asked the accused in the Hokkien dialect about the contents of the two polythene bags. The accused replied in Hokkien that someone gave them to him. When asked a second question as to who the person was, the accused did not reply but just grinned. See Leng Yeow was then instructed to escort the accused in his car to the CNB with the contents in the car boot; they all returned to the CNB at about 4pm.

At the CNB, the accused's car was parked at the car porch, and a photograph (P2) was taken of the contents of the boot as they were at the time. Later, they were off-loaded from the boot and photographs of the respective items (P3 to P11) were taken. The two polythene bags, one white and the other blue, were found to contain bars of white substance; the white polythene bag had 24 bars and the blue 22 bars, and each bar was wrapped in plastic sheet in the form of a plastic packet. The accused's car was searched; from the glove compartment were recovered two airline tickets for a journey from Singapore to Sydney bearing the names of Lim Chee Keong and Ng Ling Ling respectively. From the same glove compartment were found also three international passports belonging respectively to the accused, Lim Chee Keong and Ng Ling Ling.

The accused was brought to the operation room of the CNB. There the packets of white substance from the two polythene bags were weighed. The accused was asked to give, and he gave, samples of his urine. The white plastic packets and samples of urine were sent to the Department of Scientific Services for examination and analysis. The white plastic packets were found to contain a total of not less than 1,120.81g of diamorphine; the samples of urine from the accused, on analysis, were found to have no trace of morphine. Lim Chei Yoo estimated the street value of these drugs to be about $3m.

Later in the evening, Lim Chei Yoo with other officers and with the accused conducted two raids, one at Block 18, Toa Payoh, Lorong 7, #10-232 and another at Block

28, Hoy Fatt Road, #06-34. Nothing material, however, was found in these premises.

At about 12.05am on 11 May 1987, at the office of the CNB, senior narcotics officer, Tan Boon Hock, with the assistance of Wu Nan Yong, a certificated interpreter, recorded a statement from the accused under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Ed). The statement was objected to by counsel for the accused and a trial within a trial was held to determine the admissibility of that statement. We should add that the statement was made to a narcotics officer, and it has been held in *Loong Phong Hoy* v *PP*[1] that a narcotics officer exercising any of the powers under the Misuse of Drugs Act (Cap 185, 1985 Ed) is not a police officer within the meaning of s 122 of the Criminal Procedure Code (Cap 68, 1985 Ed) ('the CPC'). The admissibility of this statement, therefore, is governed by the Evidence Act and not s 122(5) of the CPC; for our purpose, however, there is hardly any difference between the two.

Trial within a trial

Both before and after the statement was recorded, the accused was sent to Singapore General Hospital for a medical examination. On both occasions he was examined by Dr Philip Tseng Seng Soon, who found that no significant physical abnormality or fresh injuries were present. At any rate, it was not the case of the accused, nor was it ever suggested, that the accused was assaulted by any of the narcotics officers or anyone else.

Tan Boon Hock was called, and he gave evidence on how the statement was recorded. He said that about 6.30pm on 10 May 1987, Lim Chei Yoo telephoned him, requesting him to assist Lim to record a statement under s 122(6) of the CPC from a male Chinese whom he later ascertained to be the accused. He arrived at the office of CNB at about 9.15pm and waited in his room. At 10.30pm, Lim Chei Yoo came to his room and informed him that he was not ready as the accused had been sent to the General Hospital for medical examination. Just after midnight on 11 May 1987 he was called to the office of Lim Chei Yoo, and there he was handed by Lim a typewritten charge and the identity card of the accused. Lim told him that Wu Nan Yong, who was then in the room, would be the interpreter and requested Tan to make use of the adjoining room for the purpose of recording the statement. Tan then went to the adjoining room followed by Wu Nan Yong, and the accused was brought to the room by Wan Othman. The handcuffs on the accused were removed, and Wan Othman left the room. He introduced Wu Nan Yong to the accused, and asked the accused whether he had any objection to Wu Nan Yong acting as the interpreter, to which the accused said he had none. Present in the room at that time were only Tan Boon Hock, Wu Nan Yong and the accused. The accused was seated in front of Tan Boon Hock with Wu Nan Yong seated at the side. Tan read out the typewritten charge to the accused, and Wu Nan Yong interpreted it to the accused in Hokkien. After the charge was read out, the accused acknowledged that he understood the charge by signing below it. Tan and Wu also signed below it. Thereafter, Tan wrote out the same charge on a piece of paper and read it to the accused in English which was interpreted to the accused in Hokkien by Wu. The accused indicated that he understood the charge and signed below it. Both Tan and Wu also signed. Next, Tan wrote out a notice of warning under s 122(6) of the CPC and read that notice in English, which was interpreted by Wu to the accused in Hokkien. The accused understood the notice of warning and signed below it, and following that, Tan and Wu also signed. Tan then served a copy of the charge and the notice of warning on the accused who acknowledged receipt thereof. Thereafter, the accused voluntarily made a statement in Hokkien which was interpreted to Tan in English by Wu, and Tan recorded the statement in English. The statement was then read and interpreted to the accused in Hokkien by Wu, and he was invited to sign below the statement, which he did. Wu also signed below the statement. The accused was then invited to make any correction or alteration to the statement but he did not do so. Finally, all three of them signed at the bottom of the statement. The recording of the statement was concluded at 12.35am.

After the statement was recorded, Wan Othman was called to escort the accused out; the accused was escorted to Lim Chei Yoo's room. Tan then brought the statement and the charge and handed them to Lim Chei Yoo who read the statement and asked the accused in Hokkien: 'Where is Low Chak?' The accused replied that he was staying at Jurong but did not know how to contact him.

Tan Boon Hock was cross-examined on his evidence. He was challenged on his evidence that the charge and the notice of warning were explained to the accused. He said it was Wu Nan Yong who did the explanation. It was put to Tan that throughout the recording of the statement the accused was hesitant, he was worried and tired, and that Tan through Wu asked the accused to co-operate and also said that Tan would help him and would not want to see him hanged. It was also put to Tan that the statement was obtained by promise and inducement made to the accused. All these Tan denied.

Wu Nan Yong also gave evidence. He said that at about 11.30pm on 10 May 1987, an officer from the CNB went to his home to call him to go to the CNB to act as interpreter. He was brought to the CNB at about 11.45pm. He went to see Lim Chei Yoo, and at that time the accused was not there yet. A short while later the accused was brought in, and after that Tan Boon Hock came to the

room. Tan talked to Lim, and later Wu was asked to follow Tan to the next room. The accused was brought into the room by Wan Othman and his handcuffs were removed and Wan Othman left the room. Wu was introduced to the accused by Tan and he ascertained from he accused that he wished to speak in the Hokkien dialect. The accused was seated at the table in front of Tan, and he was seated at the side. Tan read out the typewritten charge, which he interpreted and explained to the accused in Hokkien. Thereafter, the accused signed below the charge; so did he and Tan. Tan then wrote the charge and read it out in English. Wu then interpreted and explained the charge to the accused in Hokkien. The accused then indicated that he understood the charge and signed below it; so did he and Tan. Next, Tan wrote the notice of warning, which he read out in English; Wu interpreted and explained it to the accused in Hokkien. The accused understood the notice of warning and signed below it, followed by him and Tan. A copy of the charge and the notice of warning was given to the accused, and he acknowledged receipt. The accused then made a statement which he interpreted to Tan who recorded it in English. Thereafter, the statement was read and interpreted to the accused who was then asked to sign below it which the accused did, and Wu then signed also. The accused was invited to make any correction or alteration to his statement, but he declined to do so. Thereafter, all three of them signed at the bottom of the statement.

Wu Nan Yong was challenged on his evidence that he interpreted and explained the charge and the notice of warning to the accused in Hokkien; it was put to him that he did not do so. He maintained that he did. His attention was drawn to the following statement appearing just below the notice, which is as follows:

> The content of the above notice was read to the accused in Hokkien. After which I accordingly served the duplicate of this notice of warning to him on 11 May 1987 at 12.10am at the Central Narcotics Bureau Singapore.

He was also cross-examined on his evidence that no inducement or promise was made to the accused. It was put to him that the accused did not understand what transpired, that he was confused and tired, that inducement or promise was made to the accused, and that the statement made by the accused was not voluntary. These were all denied by Wu. To Wu, the accused appeared normal. Wu reiterated that the charge and the notice of warning were both interpreted and explained to the accused, and the accused understood the charge and the warning.

The accused then gave evidence. He said that on the night before his arrest he was in his mess, 369-A, Balestier Road and gambled throughout the night until about 6.30am the following morning. At about 7am, he sent some of the gamblers home. He said that after his arrest he was brought to the CNB. There he was handcuffed and made to squat at the car porch. The car boot was opened and photographs were taken of the contents in the boot. Lim Chei Yoo did ask him if he knew that the white plastic bag contained 'Pei Hoon', to which he said that he did not know. He was stunned. However, Lim Chei Yoo advised him not to be afraid and asked him to co-operate. A few of the officers were also around, and some of them said that he was going to be hanged because of the quantity of 'Pei Hoon'. He was at the car porch for a long time. Later he was brought upstairs to Lim Chei Yoo's office. Lim Chei Yoo was seated at the table, and he was asked to sit on a chair in front or near the table and was handcuffed to the chair. Subsequently, he was brought to another room where the contents of the two polythene bags were weighed by Lim Chei Yoo. Lim Chei Yoo told him that it was 'Pei Hoon' and he would be hanged. He was then brought back to the office of Lim Chei Yoo and was made to sit on a chair with his right hand handcuffed to the chair. Lim Chei Yoo asked him to whom the 'Pei Hoon' belonged and he told him that it belonged to Low Chak. At that point, Teo Ho Peng, the assistant director, who was present in the room, uttered: 'Bastard'. He then went into his room and came back with two photographs and showed them to him. They were the photographs of Low Chak. Lim Chei Yoo asked him for the address of Low Chak, which he gave. Thereafter, Lim Chei Yoo informed him that if Low Chak was arrested, the accused would become a prosecution witness and that would be all right for him, as he would then only get a few years' imprisonment. Lim Chei Yoo kept on asking him not to worry and to co-operate with him.

The accused also said that whilst he was in Lim Chei Yoo's room, Teo Ho Peng came and put his arm around his shoulder, and said that he (Teo) was 'Tua Yah Pek' and that Lim Chei Yoo was 'Tze Yah Pek' — both these are names of deities — and that they were the persons who arrested people with chains. Teo advised him to co-operate with Lim Chei Yoo and he would do his best to help him, and that unless he co-operated with Lim Chei Yoo he was bound to die.

The accused said that behind Lim Chei Yoo there was a white board with writing on it; the words were written in blue, black and red. He was told by Lim Chei Yoo that the words in red were the names of all persons going to be hanged, and that in a few days' time his name would be on the board. On hearing this, the accused was frightened and dumbfounded. Lim Chei Yoo also told him that he was a religious man, and he and the accused were childhood friends and their parents were friends. Lim Chei Yoo kept asking him not to worry. Later, when Lim Chei Yoo brought him along to raid the flats at Toa Payoh and Hoy Fatt Road, Lim Chei Yoo repeatedly asked him not to worry. After the raids, he

was brought back to the office of Lim Chei Yoo and he was again seated on a chair with his hand handcuffed to the chair. There were officers going in and out and saying that the accused was bound to be hanged. Throughout all this time, the accused said he was not offered any food or drink whilst the officers themselves did have some food.

The accused testified further that later in the evening he was brought to the General Hospital for medical examination, and on his return he was taken to a room next to Lim Chei Yoo's room and there were present Tan Boon Hock and Wu Nan Yong; also present was the guard who escorted him to that room. He said that the charge was read to him; he was confused and frightened as he was told that he was going to die. The charge was read to him by the interpreter and did not understand it. He could not remember what he was told. He said that the interpreter told him something which he could not understand. However, he admitted that the warning was given to him. Both the officers, that is, Tan Boon Hock and Wu Nan Yong, asked him to co-operate. They spoke to him in Hokkien. He did make a statement, and when it was read back to him, he told them that that was not what he said and had an argument with the interpreter. After that he was asked to sign, and he signed the document. He said that at the time he was hungry, tired and in a daze. He was then taken to Lim Chei Yoo's room and there the officers told him that he was going to be hanged.

Evidence was adduced to show that on the night before the arrest the accused was in his mess gambling the whole night until the following morning at about 7am. One Sim See Shan and his wife, Yap Swee Cheng, both testified that on the night of 9 May 1987 they saw the accused in the mess and that Sim was there gambling until 7am. His wife, Yap Swee Cheng, was with him throughout. At about 7am, they were sent back to their home by the accused.

The accused's wife, Madam Lim Lian Heng, was called to give evidence also. She testified that on the evening of 10 May 1987, when she and her children returned to the flat they met narcotics officers, who identified themselves, and they all entered the flat with her and waited for a team of narcotics officers to arrive with the accused. The team arrived later with the accused; they brought along dogs and searched the flat. After the search, Lim Chei Yoo told her not to worry, and said that the accused and he were good friends and he would help the accused.

To rebut the evidence of the accused the prosecution called Teo Ho Peng, the assistant director of the CNB. He testified that in the afternoon of 10 May 1987 at about 4.20pm, he went to his office and was in his room which was adjoining to Lim Chei Yoo's room. He did not see the accused, nor did he speak to the accused. He admitted that he knew that there was a major operation going on and that the accused was arrested; he was told about this by a narcotics officer called Lee Tai Huat. Later, in the evening, he took the dog team to assist the raids at the apartment in Toa Payoh and Hoy Fatt Road. He returned to the CNB at about 10.30pm. He confirmed that it was he who asked the officers to buy 'pows' for them to eat. He left at about 1am on 11 May 1987.

We now turn to the question whether on the evidence before us the prosecution has proved beyond any reasonable doubt that the statement was made by the accused voluntarily and was not caused or brought about by any inducement, threat or promise. We first examined the evidence relating to the recording of the statement. The statement was recorded by Tan Boon Hock with the assistance of Wu Nan Yong, the interpreter. It was alleged by the accused that when he was in the room (where the statement was recorded) he was handcuffed to the chair and the escorting officer, Wan Othman, was present. We rejected this evidence. We accepted the evidence of Tan Boon Hock and Wu Nan Yong that after the accused was escorted into the room, his handcuffs were released and the escorting officer left the room; the only persons present then were the three of them, Tan Boon Hock, Wu Nan Yong and the accused. We are satisfied that throughout this time both before and when the statement was recorded, neither Tan Boon Hock nor Wu Nan Yong in any way threatened the accused or put him in fear or held out or made any inducement or promise to the accused. The accused certainly did not allege that both or either of them threatened or frightened him in any way or made or held out any promise to him. The only allegation he made was that Tan Boon Hock asked him to co-operate. We do not accept that Tan Boon Hock sought in any way to induce the accused to make any statement. He was requested by Lim Chei Yoo to assist to record the statement, and he had no involvement or participation in the investigation of the offence. In any event, in our opinion, assuming that Tan Boon Hock did ask the accused to co-operate, such a request in the circumstances of this case could not amount to or constitute an inducement to the accused to make the statement which he made.

We next examine the evidence of the events that occurred between the time of the arrest of the accused and the time when the statement was recorded to see whether any inducement, threat or promise was made to the accused which caused him to make the statement which was made. We think that in all probability, when the accused was at the car porch and the contents were off-loaded from the boot of the car and also at the time when the accused was in the room of Lim Chei Yoo, the latter did request the accused to co-operate. Plainly, at that time Lim Chei Yoo having found such a large quantity of what he believed to be controlled drugs would be interested to find out the

source where it came from and would try to elicit from the accused any relevant or useful information. He was probably seeking more information from the accused. However, we do not think that the words he used with a view to seeking information from the accused at that stage could amount to an inducement to the accused to make the statement before Tan Boon Hock.

As to the evidence of the accused's wife, Madam Lim Lian Heng, we accept her evidence that when the party of narcotics officers raided her apartment at Hoy Fatt Road, Lim Chei Yoo spoke to her and asked her not to worry and said that he and the accused were 'best friends' and that he could help and that whatever she knew she could tell him and could contact him at the number which he gave her. These are clearly words of comfort made by the investigation officer, but they were said to Madam Lim, and not to the accused though within his hearing. There was no evidence that in consequence of what Lim Chei Yoo said, Madam Lim asked or persuaded the accused to speak up and make the statement which he later made.

We next turn to examine the evidence of Teo Ho Peng. We do not accept the evidence of the accused that in the evening of 10 May 1987, while the accused was seated at or near the desk of Lim Chei Yoo, Teo Ho Peng put his arm around the accused's shoulder and said that he was 'Tua Yah Peh' and Lim Chei Yoo was 'Tze Yah Peh' which are the names of two deities — presumably intended to frighten the accused. Teo Ho Peng at that time was already covering the duties of the assistant director, and we can see no reason why he should come forward and interfere in the investigation then conducted by Lim Chei Yoo. He learned of the arrest from his colleague Lee Tai Huat and there was no need for him to frighten or induce the accused to say anything in relation to the case. He admitted that he did bring the dog unit to the two apartments to assist in the raids. We see nothing unusual or extraordinary on such a part played by Teo Ho Peng in assisting the investigating team.

Assuming that both Lim Chei Yoo and Teo Ho Peng, or either of them, did say to the accused what the accused alleged they or either of them said, there still remains the question whether they or either of them had instilled such fear in the mind of the accused or held out such inducement or promise to him that caused him to make the statement which he made to Tan Boon Hock. On this point, Lord Morris of Borth-y-Gest in *DPP* v *Ping Lin*[2] at p 595 said:

> ... The test is simply whether the Crown have proved that a statement made by an accused was voluntary; in the sense that it was not obtained from him either because some person in authority 'exercised' fear or prejudice or 'held out' hope of advantage. Stated otherwise, was it as a result of something said or done by a person in authority that an accused was caused or led to make a statement: did he make it because he was caused to fear that he would be prejudiced if he did not or because he was caused to hope that he would have advantage if he did. The prosecution must show that the statement did not owe its origin to such a cause.

We do not think that the statement the accused made was a result of something said or done by either Lim Chei Yoo or Teo Ho Peng. The statement 'did not owe its origin to such a cause'.

Next, the accused sought to show that the circumstances in which he made the statement were so oppressive that his will was sapped or broken with the result that the statement was not one made on his own free will. He said that when he was first brought back to the CNB he was handcuffed and was made to squat at the car porch for a long time. Later he was taken up to Lim Chei Yoo's room, and there again he was handcuffed, that is, one of his hands was handcuffed to the chair. All throughout, since the time of his arrest at about 3.30 to 4 o'clock in the afternoon to about 1am the following morning, he was not given any food or drink at all. He was therefore very tired and hungry and was in a daze and a state of confusion when the statement was given. It was not disputed that at the CNB premises, except during the short interval when the statement was recorded, the accused was at all times handcuffed and he was required to wait at the car porch for quite some time. It was also not disputed that no food or drink was given to the accused throughout this period. That was highly inconsiderate of the officers concerned. We can see no reason why the accused should not have been provided with refreshment and food, particularly at the time when they returned from the raids and before the accused was sent to the General Hospital for medical examination. Lim Chei Yoo's explanation was that if food was offered, the accused might say that an inducement was offered. We are not impressed with this answer. We accept that the accused at the material time was tired, hungry and thirsty. He was also under great stress, having regard to the fact that he was in custody and confronted with a charge of having trafficked in a substantial quantity of what was believed to be controlled drugs. But we do not think that the accused was in such a state of shock, exhaustion or fatigue that he had no will to resist making any statement which he did not wish to make. Dr Tseng, who saw him before and after the statement was taken, said that the accused was alert. Wu Nan Yong said that he looked normal. We are satisfied beyond any reasonable doubt that the statement as recorded by Tan Boon Hock was made by the accused voluntarily and that no inducement, threat or promise was made to the accused.

We consider now the last objection raised by counsel for the accused, namely, that the charge and notice of warning were not explained to the accused in compliance with s 122(6) of CPC and on that ground the statement made by the accused to Tan Boon Hock was not admissible

in evidence. The accused in his evidence said that the charge and the notice of warning were not explained to him and he did not understand what was read and interpreted to him. On this point counsel for the accused relied heavily on the following statement made by Tan Boon Hock, which appeared immediately below the notice of warning:

> The content of the above notice was read to the accused in Hokkien. After which I accordingly served the duplicate of this notice of warning to him on 11 May 1987 at 12.10am at the Central Narcotics Bureau Singapore.

It was argued that if the notice of warning was explained to the accused, Tan would have said so in the above statement, which he did not. Tan in his evidence said that though he stated only that the notice was read to the accused in Hokkien it was in fact interpreted and explained by Wu Nan Yong to the accused. Wu Nan Yong in his evidence said that he interpreted and explained the charge and the notice of warning to the accused. He was, however, challenged on his evidence as regards his explanation of the charge and the notice of warning to the accused. Counsel for the accused urged on us that on the strength of the statement of Tan Boon Hock we should reject this piece of evidence of Wu Nan Yong and hold that the charge and the notice of warning were not explained to the accused as required by s 122(6) of the CPC, and on that ground the statement recorded pursuant to that sub-section was not admissible. His sheet-anchor is undoubtedly *PP* v *Chan Sway Beng*.[3] In that case the accused was charged with murder and while in custody the police recorded a statement from him and the prosecution sought to admit this in evidence. After the charge was read by the recording officer, it was interpreted to the accused and beneath the charge were the following words:

> The above charge was read over to me in English by the recorder and interpreted in Cantonese by the interpreter Lau Sau Heng and I understood the contents of the charge.

After this, the notice of warning was written by the recording officer and was read to the accused by the recording officer and interpreted by the interpreter. The words below the notice of warning said:

> The above warning was read over to me in English by the recorder and interpreted to me in Cantonese by the interpreter, Lau Sau Heng, and I understood the contents of the above warning.

The interpreter was called and on cross-examination admitted that she interpreted word for word the charge and the notice of warning and no more. The recording officer also gave evidence to the effect that he read the charge and the notice of warning and confirmed that at no time did he explain the charge beyond reading it out. It was held that the statement was not admissible as the charge and the notice of warning were not explained to the accused in compliance with s 122(6) of the CPC. The High Court in the judgment said at p 412:

> Sections 121(6) and 122(1), now section 123(1), were enacted in 1976. The combined effect of these two subsections is that, where a person in the position in which the accused found himself fails, upon being administered the warning provided by s 121(6), to mention a fact which he could reasonably have been expected to mention, the court may draw adverse inferences against him. Having removed the right, which previously existed, of an accused person to remain silent without adverse consequences, the legislature was, by enacting ss 121(6) and 122(1), conferring upon the accused the right, if he wished, to make a statement in exculpation of himself at a certain stage of the proceedings against him, which the court was entitled to take a full account of.
>
> That, it seemed to us, could well be why s 121(6) required that the warning be 'explained'. The Act makes a clear distinction between explanation and interpretation, as will be seen by comparing s 121(6) with s 123(4), the latter dealing with statements or confessions made before a magistrate.
>
> ...
>
> We declined to admit the accused's statement by reason of the failure of Inspector Maniam and Miss Lau to explain the charge and the warning to the accused, and for no other reason.

With respect, we are unable to agree with this conclusion. First, the admissibility of a statement made pursuant to s 121(6) is not governed by that subsection but, in the case where a statement is made to a police officer, is governed by s 121(5) of the CPC and, in the case of statement made to narcotics officer, by the Evidence Act. A failure to explain the charge and the warning to an accused cannot afford a reason for excluding the statement made by the accused which is otherwise admissible. The purpose of s 121(6) is to inform the accused of the charge he is facing and to give him an opportunity of saying any fact which he intends to rely on in his defence in court and further to warn him that if he does not say it then, his silence may give rise to an adverse inference against him. Clearly, s 122(6) has a direct bearing on s 123 of the CPC, and the whole of the exercise prescribed in s 122(6) is to forewarn the accused of the court's power under s 123(1). Section 123(1) provides:

> Where in any criminal proceedings against a person for an offence evidence is given that the accused, on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so charged or informed, as the case may be, the court, in determining whether to commit the accused for trial or whether there is a case to answer, and the court, in determining whether the accused is guilty of the offence charged, may draw such inferences from the failure as appear proper; and the failure may, on the basis of those inferences, be treated as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material.

In our opinion, a failure to comply with s 122(6) cannot affect the admissibility of a statement given by the accused pursuant to that subsection; it may, however, have the following effect. If a statement is made by the accused, the failure to comply with s 122(6) may affect the weight to be attached to that statement. A statement on being admitted in evidence has yet to be considered and tested as to its probative value, eg whether it is inherently credible or inherently consistent with the facts and circumstances, and in such an exercise a failure to observe the procedure prescribed in s 122(6) is a relevant factor. If, on the other hand, no statement is made by the accused, the court in determining whether or not the accused is guilty of the offence charged may be reason of such failure, depending, of course, on the circumstances, decline to invoke s 123(1) and draw any adverse inference against the accused.

Secondly, in our opinion, the word 'explain' in sub-s (6) should in the context of that subsection be construed in a broad common sense manner. 'To explain' is to make one understand. If an accused is made to understand the substance of the charge and the adverse implication of not stating any fact which may or might exculpate him, then that subsection would have been complied with. If the accused is one who reads and speaks English, and both the charge and the warning are read to him and are shown to him and the accused is made to understand the substance of the charge and the implication of the warning, we do not see what else there is that ought to be explained to him. It is clearly not intended by that subsection that the recording officer should explain the ingredients of the offence with which the accused is being charged. Further, the warning is couched in very simple language which is easily comprehensible by those who read English. We do not see what else there is and how else one ought to explain the warning; it is certainly unsafe to simplify it or, on the other hand, to elaborate or amplify it; any such attempt may convey a wrong meaning or implication to the accused. It follows that if an accused does not read and speak English, and the charge and the notice of warning are both accurately interpreted to him in a language which he understands, it would, in our opinion, amount to an explanation to him of the charge and the warning; he would have understood from the interpreter the substance of the charge and the implication of the warning.

Reverting to the facts in this case, we are satisfied that Wu Nan Yong did interpret the charge and the warning to the accused in Hokkien and that the accused understood the charge and the warning. We do not accept the evidence of the accused that he did not understand the charge and what was interpreted to him. We are satisfied that he did. He certainly did understand that the charge was one for transporting controlled drugs of certain quantity and was fully cognisant of the death penalty which such charge carries. As we said, the notice of warning was couched in simple language; it was interpreted to him, and we are satisfied that he understood the content thereof. In these circumstances, in our opinion, the charge and the notice of warning had been explained to the accused for the purpose of s 122(6). We therefore rejected the submission of counsel for the accused that the statement was inadmissible. For the reasons which we have given, we held that the statement of the accused recorded by Tan Boon Hock was admissible, and we accordingly admitted it in evidence (which was marked together with the charge and the warning as P30).

The Resumed Trial

The statement of the accused recorded by Tan Boon Hock reads as follows:

> Low Chak asked me to bring a plastic bag to Hoover Theatre and someone would come and collect the plastic bag. If the plastic would be collected, Low Chak would give me ten thousand dollars tonight (10 May 1987).

After the statement was admitted, the prosecution called See Leng Yeow to give evidence. It is necessary to set out his evidence in some detail; the material part of his evidence has a direct bearing on the prosecution's case and was challenged by the defence. See Leng Yeow at the material time was an assistant narcotics officer. He testified that on 10 May 1987 at about 10.45am he received a telephone call from Lim Chei Yoo instructing him to report for duty. He was then picked up by Lim Chei Yoo at his house and was brought to the CNB office. There, he and other officers had a briefing, and thereafter he left with Lim Chei Yoo; Lim Chei Yoo rode a motor cycle and he was the pillion rider. They reached Balestier Road and took up their positions in the vicinity of 369-A, Balestier Road. At about 12.25pm, he heard on the telephone that a Chinese called 'Ah Tat' was seen, and Lim Chei Yoo pointed out 'Ah Tat' to him. He identified 'Ah Tat' as the accused. At about 12.40pm, he saw the accused coming out of 369-A, Balestier Road and walking towards his motor car EP 3230P. The accused drove the car. He and Lim Chei Yoo on one motor cycle, and Chew Khai Chow and Tai Kwong Yong on another motor cycle, trailed the accused all the way to Block 28, Hoy Fatt Road. There they took up their positions at the void deck opposite Block 28, and he saw the accused on the sixth floor entering flat #06-34 of Block 28. They remained there keeping a surveillance on the accused. About half an hour later, the accused was seen coming out of the flat, and this time he was wearing a yellow T-shirt with the same dark pants. He came down to his car at the carpark and drove the car out of the carpark. He and Lim Chei Yoo, and Chew Khai Chow and Tai Kwong Yong, continued to trail the accused all the way back to Balestier Road. When they arrived at Balestier Road they saw the accused's car parked outside or near to 369-A, Balestier Road.

At about 3.10pm, he saw the accused again coming out from 369-A, Balestier Road, and entering his car; the accused drove away. Lim Chei Yoo and he on one motor cycle then trailed him, followed by Chew Khai Chow and Tai Kwong Yong also on a motor cycle. They were also accompanied by other officers in two cars. The accused was trailed to Lorong 7, Toa Payoh where he drove the car to the carpark of Block 17. On entering the carpark Lim Chei Yoo asked him to alight and trail the accused on foot. He saw the accused's car parked behind the coffeeshop at Block 18. He lost sight of the accused and was looking for him at the hawker centre in front of Block 18. A short while later, he saw the accused on the ground floor near the coffeeshop; he saw the accused carrying a white plastic bag in his right hand which he estimated to be about 3 to 4kg. He saw the accused going round the bend towards the carpark and he took a short cut through the coffeeshop and reached the carpark. There he saw the accused opening the car boot and placing the white plastic bag into the boot. The accused then reversed his car and drove off. He was then picked up by Lim Chei Yoo on his motor cycle, and he informed Lim Chei Yoo that the accused had a white plastic bag which he put in the boot of his car. Together with other officers of the party they trailed the accused to Balestier Road. At Balestier Road the accused drove his car up to the point near Pegu Road and there made a U-turn and proceeded along the opposite direction of Balestier Road passing 369-A, Balestier Road. Near Balestier Plaza, the car made another U-turn. At his juncture, Lim Chei Yoo instructed him to inform the others through the radio set to arrest the accused when he alighted from his car. Accordingly, he passed the instructions to the others. After the U-turn, the car driven by the accused went into Jalan Ampas and stopped at the entrance to the carpark of Balestier Plaza. There the accused was arrested and brought to the rear of the car. Lim Chei Yoo asked See Leng Yeow to take the car key and open the boot, which he did. Upon opening the boot, See Leng Yeow pointed out the plastic bag to Lim Chei Yoo. At that point, Lim Chei Yoo asked the accused what the content was, to which the accused replied that someone gave it to him. When he was asked further by Lim Chei Yoo who the someone was, the accused just grinned and did not say a word. See Leng Yeow then helped to escort the accused back to the CNB office. When he reached the CNB, he was asked to hand over the accused to Wan Othman and to proceed with others to Block 18, Lorong 7, Toa Payoh to wait for Lim Chei Yoo. He and other officers went to Block 18 and waited for Lim Chei Yoo who arrived at about 7pm. Lim Chei Yoo then asked them to go to Block 28, Hoy Fatt Road and he went there together with other officers. There they waited outside the accused's apartment until the accused's wife returned. He and the other officers identified themselves to her and they went into the apartment to wait for Lim Chei Yoo who arrived with the other officers and the accused at about 9.45pm. When Lim Chei Yoo arrived, they came out of the apartment, and Lim Chei Yoo and his party conducted the search. They all left the apartment at about 10.10pm and returned to the CNB. He was one of the officers who escorted the accused to the General Hospital for medical inspection.

See Leng Yeow's evidence that he saw the accused carrying a white plastic bag and putting it into the boot of his car at the carpark of Blocks 17 and 18, Lorong 7, Toa Payoh, was severely challenged by counsel for the accused. Counsel also sought to impeach his credit by showing that he was a drug addict. See Leng Yeow admitted that he had been having the habit of taking drugs since 1984. From that time his habit of taking drugs was on and off, and the drug he took was heroin. He was not admitted to any centre for correction of his habit; nor did he see any doctor for assistance. There was an investigation conducted on him in 1987, and he resigned from the service with the CNB in July 1987. It was put to See Leng Yeow that he had acted most improperly: in mid-1987 he telephoned the accused's wife, Madam Lim Lian Heng, stating that he wanted $2,000, and that if this amount was given to him, he would alter his statement, and that he would like to meet her and negotiate the amount, and that he was prepared to reduce the sum and accept payment by instalments of $200 each. It was also put to him that he made a second telephone call to Madam Lim and insisted that they should meet at the coffeeshop below to discuss. These were denied by See Leng Yeow.

At the close of the case for the prosecution, no submission was made by counsel on behalf of the accused. The prosecution had clearly made out a case which, if unrebutted, would warrant a conviction of the offence charged. The standard allocution was administered to the accused and he was called to enter upon his defence. The accused elected to give evidence.

Case for the defence

The accused gave a brief account of the history of his family. At the material time before his arrest he was a contractor of Keppel Shipyard doing painting work. His income then was uncertain depending on the number of ships available for painting. As he did not have much work from Keppel Shipyard and had nothing to do he rented a place and ran it as a gambling mess: that was 369-A, Balestier Road. He paid $1,500 per month as rent. He invited his friends to play mahjong there. Occasionally, the people who gambled lost money and they had to borrow money from him, and he had a basic reserve amounting to $2,000 to $3,000 in cash. It was in this gambling mess that he met a person called Low Chak who frequented the place every night. He had known Low Chak only for about two years prior to his arrest. Low Chak lent him money frequently when he was

short of cash to lend to the gamblers who had lost money. No interest, however, was charged by Low Chak for loans made to him frequently. He confirmed that he had a car EP 3230P and used to park his car in front of the mess and the key to the car was always hung up in the mess. Anyone could make use of the car; sometimes the car was used to buy food for the gamblers. The gamblers also borrowed the car from him and he had to lend it to them; they put their things in the boot of the car. Low Chak, he said, often borrowed his car and sometimes put things in the car. He would not know what they put in the car; he never asked them as he trusted them.

On 8 May 1987, Low Chak came to the mess at night bringing along a friend. He had not met this friend of Low Chak before. Low Chak handed to the accused two international passports and a sum of $3,000 in cash and asked the accused to help him buy two air tickets for the journey from here to Sydney on 10 May 1987. The following day was a Saturday, as Low Chak was going to the races, he asked the accused to buy the tickets. The accused felt obliged to help Low Chak, as the latter had helped him very often in the past. The accused, however, did not know the holders of the two passports. Accordingly, on the following day he purchased the two air tickets. On the night of 9 May 1987, Low Chak came to the mess and the accused told him that the tickets had been purchased at the cost of $2,500 but that he had lost the balance of $500 in gambling. Low Chak told him not to worry about it and to keep the two passports and the two air tickets saying that his friend would come and collect them the following morning. By the term 'friend' he understood Low Chak to refer to the friend who came with him to the mess the night before. Low Chak also told him that he would call the accused in the afternoon of the following day to ask the accused to send the two passports, the air tickets and the thing that he had put in his car to Low Chak's friend. At that point, however, he did not know what the thing which Low Chak had put in his car was. Low Chak left the mess after gambling for about an hour. The accused was in the mess and gambled until the following morning, which was his normal pattern. Thereafter he sent some gambling friends back to Yishun Ring Road between 6 and 7am and returned to the mess at about 7am. At about 9am, he said he went back to his home at Hoy Fatt Road where he had a bath and a bowl of mee. At about 1pm, he returned to the mess. Shortly thereafter, he received a telephone call from Low Chak who asked him to go with the two passports, the two air tickets and the thing he had put in his car to a place in front of Hoover Theatre to wait for his friend. The accused, however, did not ask Low Chak what the thing was; the reason was that he trusted Low Chak. He said that a few days earlier, Low Chak had borrowed his car and had told him that he had put something in the car and also said that he would come back to collect it in a few days' time. Soon after the conversation on the telephone, he left for Toa Payoh. When he arrived at the flat at Toa Payoh he found that there was no one in and he thereupon returned to Balestier Road. He denied that when he was at Toa Payoh he carried anything from the flat to his car. When he reached Balestier Road he wanted to go to the mess; so he turned back to the place but because of heavy traffic and there were a lot of cars parked there, he decided to park his car in the carpark at Balestier Plaza. When he entered the carpark and stopped there he was arrested.

He said that when he was brought to the CNB office he was asked about the things in the boot and he said that they belonged to his friend. As regards the contents in the boot, he said there were so many things wrapped up in the boot, and except the guitar, they did not belong to him. He said one night Low Chak came to the mess and borrowed his car from him and after that he said he had put something in his car. Low Chak told him that he would come back to collect the thing. He did not know the contents of the plastic bag which were later found to be controlled drugs.

As regards the statement recorded by Tan Boon Hock, he said that at that time what he said was that the money, ie $10,000, would be lent to him by Low Chak and not given to him. He said that Low Chak often lent him money and instead of borrowing small sums from Low Chak he would borrow a lump sum from him and would repay him weekly. As to the plastic bag referred to in the statement he said he did not know which plastic bag it referred to. He said that the friend of Low Chak would collect the plastic bag. He did not know what the plastic bag contained.

Apart from the evidence of the accused, the other evidence adduced by the accused which is of some relevance is the evidence of the accused's wife, Madam Lim Lian Heng. She testified that sometime in the middle of 1987, while the accused was in remand, she received a telephone call one evening from a person who said he was See Leng Yeow. That person said he was one of the narcotics officers involved in the case against her husband and that he wanted $2,000 from her, and if she paid him this amount he would change the statement which he had made. The person was prepared to reduce the sum and accept payment by instalments of $200 each, and he kept asking her whether she was interested in the case. She was rather frightened, she said, and she told him that she was unable to pay the amount of money. On the following night this person telephoned her again and asked for $200 and insisted that she should go downstairs to meet him at the coffeeshop. She declined, and subsequently she handed the telephone to her son who took over the conversation with the person.

Determination

We now turn to our evaluation of the evidence. At the time when the accused was arrested by the narcotics officers at the entrance to the carpark of Balestier Plaza, there was found in the boot of his car two polythene bags containing a total of not less than 1,120.81g of diamorphine. The car was at the time driven by him. In these circumstances, he has to rebut the statutory presumptions which are loaded against him. First, under s 18(1) of the Misuse of Drugs Act (Cap 185, 1985 Ed) ('the Act'), he is, until the contrary is proved, presumed to have had that quantity of drug in his possession. Secondly, under s 18(2) of the Act, he is, again, until the contrary is proved, presumed to have known the nature of that drug. The accused said that he did not know the contents of the white plastic bag. He said that the plastic bag and the other things (except the guitar) in the boot of his car — which were many — did not belong to him. He also said that Low Chak had put 'the thing' in his car and that his friend would collect 'the thing' from him. We find this evidence of the accused difficult to accept. It is incredible that there were so many things in the boot of the car which he said did not belong to him and he did not know to whom they belonged. He said that the gamblers quite often used the car and put things in the car, but, he had not called any of his gamblers to testify that those persons who gambled at his mess had frequently or occasionally made use of his car and put things in the boot. He said that Low Chak put 'the thing' in the car and that his friend would collect 'the thing', but he had not identified what the thing was or which thing it was among so many things in the boot. In connection with the person, Low Chak, the accused had also not called any of his gamblers to testify that there was indeed such a person called Low Chak who frequently or even occasionally went to the mess to gamble. In our judgment, the accused had not rebutted the presumptions raised against him.

We now come to the evidence of See Leng Yeow. The accused was seen by See Leng Yeow to have carried a white plastic bag from the vicinity of Block 18, Lorong, Toa Payoh the carpark and to have put it in the boot of his car. It was suggested by counsel for the defence that he was a corrupt officer and a habitual drug taker and that his evidence should not be relied upon. Counsel relied on the evidence of Madam Lim as a regards the calls made by a person who claimed to be See Leng Yeow, and who asked her for $2,000 in consideration of his agreeing to alter the statement he had made. We accept the evidence of Madam Lim on this point. however, assuming that See Leng Yeow was the person who actually called Madam Lim, we do not think that his credibility as a witness on what he saw at the carpark of Block 18, Lorong 7, Toa Payoh, was in any way impeached. At the material time he could not have conceived the plan of telephoning the accused's wife and seeking to extort money from her; at that time, he had not even met the accused's wife. We therefore accept this material part of the evidence of See Leng Yeow. It is significant that upon being picked up by Lim Chei Yoo at the carpark behind Block 18, Lorong 7, Toa Payoh he immediately told Lim Chei Yoo that the accused had carried a plastic bag and placed it in the boot of his car. Further, when the accused was arrested at the entrance to the carpark of Balestier Plaza and the boot of the car was opened, it was he who pointed the plastic bag to Lim Chei Yoo without hesitation. There were then so many plastic bags in the boot, and of all those bags he pointed out to the particular bag which contained the two polythene bags of drugs.

Lastly, there is the evidence of P30, the statement of the accused recorded by Tan Boon Hock. According to the statement Low Chak asked the accused to bring the plastic bag to Hoover Theatre and someone would collect it, and if it was collected Low Chak would give him $10,000. Now, according to the accused, that was not exactly what he said. What he said was that Low Chak would lend him $10,000 if the plastic bag was collected. The reason for such loan was that Low Chak felt it was troublesome to lend him sums of money from time to time, and instead of such small loans, Low Chak offered to lend him a lump sum of $10,000 which he would repay by weekly instalments. It seems to us that whatever may be the purpose for which the sum of $10,000 was to be handed to the accused — whether it was to be given or lent to him — it is by no means a paltry sum, and was offered as consideration for his bringing the plastic bag in his car to Hoover Theatre for collection. On the basis of his statement — whether as originally recorded or as modified by him in his evidence — he knew that there was a plastic bag in his boot and he was to bring it to Hoover Theatre for collection. It must be clear to the accused that something of great value was attached to the plastic bag to warrant such a sizeable loan or a gift of such a sizeable sum, and that for some unknown or inexplicable reason Low Chak did not wish to deliver the plastic bag himself but had to enlist his assistance as a courier to do so. Any normal person who is made such an offer would have looked upon it with grave suspicion and circumspection, and would enquire the content of the plastic bag and the purpose of the delivery. We cannot accept that in these circumstances the accused would not have enquired and found out which plastic bag it was he was to deliver to Low Chak's friend and what the content of the bag was. The accused is not an ignorant or gullible young man. He is a man with some years of experience behind him; he is 45 years old — he was 44 years old at the time of his arrest — and on his evidence he had been in business for some years. From what we have perceived of him, he is not that naive as he sought to makes himself out to be; he is far from being a simpleton. Our perception of him is that he is an astute person. We therefore rejected his evidence that he did not know that the two polythene bags

contained in the white plastic bag were in the boot of his car and did not know the content of the two polythene bags.

It is apparent from our review of the evidence that, even discounting the evidence of See Leng Yeow and also the evidence contained in the statement, P30, the accused had not succeeded in rebutting the presumptions raised by ss 18 and 21 of the Act.

The accused therefore had at the material time a quantity of not less than 1,120.81g of diamorphine in his possession and was transporting that quantity from Lorong 7, Toa Payoh to the carpark of Balestier Plaza. Under s 17 of the Act, he is, until the contrary is proved, presumed to traffic in that quantity of drug. In *Wong Kee Chin* v *PP*[4] at p 161 the Court of Criminal Appeal said:

> When it is proved that the quantity of diamorphine which the accused person was transporting (in the dictionary sense of the term) was two or more grams, a rebuttable presumption arises under s 15(2) that the accused had the said controlled drug in his possession for the purpose of trafficking. Proof of the act of transporting plus the presumption under s 15(2) would constitute a *prima facie* case of trafficking which if unrebutted would warrant his conviction. In those circumstances the burden of proof would clearly shift to the accused and he would have to rebut the case made out against him. The rebuttal will depend upon the evidence placed before the court. If he can convince the trial court by a preponderance of evidence or on the balance of probabilities that the drug was for his own consumption he would be entitled to an acquittal. Factors such as the types of 'transporting', the quantity involved, whether or not the accused is an addict, would be relevant. It would be a question of evidence and the inferences to be drawn from the totality of the evidence before the court. (Emphasis added.)

The accused had not succeeded in rebutting the prima facie case which had been established against him.

We, accordingly, held that the prosecution had proved the charge beyond any reasonable doubt and convicted the accused.

Accused convicted.

Solicitors: *Gupta Sam & Wijaya.*

Reported by *Terence Tan Bian Chye*

MALAYSIAN REPORTS

Oversea-Chinese Banking Corp Ltd v Pendaftar Hakmilik, Negeri Kedah

HIGH COURT (ALOR SETAR) — ORIGINATING MOTION NO 25-37-89
KC VOHRAH J
26 MAY 1990

Land Law — Registrar's caveat — Whether registrar's discretion correctly exercised in entering caveat — Caveat entered after charges registered in respect of land — Whether claim of Department of Inland Revenue for arrears of income tax affected right of registered chargee to recoup losses secured by earlier registered charges — National Land Code 1965, ss 320(1)(b)(i), (ba) & 418 — Government Proceedings Act 1956, s 10(1)

The plaintiff was the registered chargee of the land in question. Subsequent to the registration of the four charges in favour of the applicant, a registrar's caveat was entered against the land by the Registrar of Titles at the request of the Department of Inland Revenue. It transpired that the registered owner of the land owed income tax to the department which had yet to be settled. When he defaulted in payment under the charges, the applicant applied for and obtained an order for sale of the land by public auction to recover the sum due to it. The applicant was unaware of the registrar's caveat entered against the land. When the applicant became aware of the entry of the caveat by the registrar, the applicant appealed to the High Court under s 418 of the National Land Code 1965 against the decision of the registrar to enter the caveat.

Held, allowing the applicant's appeal:

(1) The registrar cannot rely on s 320(1)(b)(i) of the Code to enter the caveat. The arrears of income tax due to the Federation from the registered owner of the land was merely an unsecured civil debt which did not give rise to a legal right in or over the land of the registered owner nor to any remedies against the land. It did not come within the meaning of the word 'interests' in s 320(1)(b).

(2) In the instant case, the registrar in entering the caveat had wrongly exercised his discretion under s 320(1)(ba). This is because once there is a charge registered in respect of the land, a registrar's caveat is incapable of being entered in respect of the land for it cannot possibly appear 'necessary or desirable' to him 'for securing that the land will be available to satisfy the whole or any part of the debt due to the Federation' since the caveat will not transform an unsecured debt into a secured debt, let alone give the debt a priority over other registered interests in the land. Instead the caveat serves to interfere with the legitimate right of the chargee to sell the land under the provisions of the Code to recoup losses secured by the charge.

(3) It was clear that the registrar did not know the value of the government debt, nor did he know the value of the debts covered by the charges. He may have known the market value of the land but that alone was not enough. Under s 320(1)(ba), the registrar is required to take into consideration material matters before he enters the caveat. His decision to enter the registrar's caveat in the instant case was thus based on insufficient facts.

(4) In the result, the discretion was not properly exercised and the decision of the registrar to enter the caveat was ultra vires the provision of s 320(1)(ba).